

KARL PETERSON

IBLA 84-327

Decided October 1, 1985

Appeal from a decision of the Anchorage District Office, Bureau of Land Management, declaring certain placer mining claims abandoned and void for failure to file annual proof of assessment work or a notice of intent to hold the claims, F-064302 through F-064308.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim

Failure to file an instrument required by 43 U.S.C. §1744 (1982) within the prescribed time constitutes abandonment of the mining claim.

APPEARANCES: Karl Peterson, pro se.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Karl Peterson has appealed from a letter decision of the Anchorage District Office, Bureau of Land Management (BLM), dated January 19, 1984, declaring placer mining claims F-064302 through F-064308 abandoned and void for failure to file either evidence of assessment work or a notice of intent to hold on or before December 30, 1981, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1982), and 43 CFR 3833.2. 1/

On May 8, 1984, this Board suspended consideration of mining claim recordation cases, including this case, pending determination of the appeal of the decision in Locke v. United States, 573 F. Supp. 472 (D. Nev. 1983). On April 1, 1985, the Supreme Court issued its decision, United States v. Locke, 105 S. Ct. 1785 (1985), in which the Court found section 314 of FLPMA

1/ Notice of BLM's decision was sent to Andrew Peterson, Karl Peterson's father, who had originally located the claims at issue and filed them with BLM. Appellant states that his father died in 1981 and that the claims were awarded to his mother as part of his father's estate. From the circumstances of the appeal, it is clear that she received notice of BLM's decision. Under Departmental rules of practice, therefore, Karl Peterson is entitled to represent his mother before this Board. 43 CFR 1.3(b)(3)(i).

to be constitutional, within the affirmative powers of Congress, and not violative of the due process of mining claimants. Consideration of this appeal may now proceed.

Section 314 of FLPMA requires the owner of an unpatented mining claim located on public land to file with the proper BLM office before December 31 of each year an affidavit of assessment work or notice of intention to hold the claim. The statute also provides that failure to file shall be conclusively deemed to constitute an abandonment of the mining claim. 43 U.S.C. § 1744(c) (1982). A review of the files for the claims at issue reveals that BLM was correct in its determination that no affidavit of assessment work or notice of intent to hold was filed during 1981. Among the documents submitted by appellant is a proof of annual labor for 1981 for some of the claims at issue; however, it is stamped only as being recorded with the Nome Recording District and does not bear a BLM date and time stamp. Filing only in the local state recording office does not constitute compliance with 43 U.S.C. § 1744(a)(2) (1982). Since no filing was made with BLM during 1981, BLM properly declared the claims to be abandoned and void. Mermaid Mining Co., 65 IBLA 172 (1982); Kivalina River Mining Association, 65 IBLA 164 (1982); Margaret E. Peterson, 55 IBLA 136 (1981). The responsibility for complying with the filing requirements of FLPMA rests with the owner of an unpatented mining claim. This Board has no authority to excuse lack of compliance, extend the time for compliance, or afford any relief from the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

R. W. Mullen
Administrative Judge

